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SIPDIS

SENSITIVE

TREASURY FOR DEP.SECRETARY'S OFFICE AND FINCEN

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TAGS: [KCRM](#) [EFIN](#) [SNAR](#) [NI](#)

SUBJECT: MONEY LAUNDERING CONTROLS IN NIGERIA

REF: A. A) ABUJA 2521 B) STATE 170551

[1](#)B. C) ABUJA 2416 D) ABUJA 2118

SENSITIVE BUT UNCLASSIFIED -- PROTECT ACCORDINGLY.

1.(U) The following assessment of Nigeria,s money laundering control regime is provided for Washington end-users as a reference guide and draws on recent Emboffs, discussions with various GON law enforcement and Central Bank officials responsible for money laundering and banking controls.

The Landscape

2.(SBU) There is no reliable estimate of the amount of criminal money laundered in or through Nigeria. Canvassing of senior GON law enforcement and Central Bank officials has produced general agreement that non-drug criminal proceeds account for at least half of Nigeria,s money laundering program, if not more. All agree that no one source of criminal activity can match the strength of the drug trade, but all agree that these sources are many and include: public corruption, "419" advance-fee fraud, trafficking in women and children, and the illegal arms trade. This conclusion seems sound given the apparent magnitude of the proceeds of corruption alone, including the billions reportedly stolen from public coffers under military rule. Only some in Nigeria,s National Drug Law Enforcement Agency (NDLEA) insist that drug proceeds account for the bulk of money laundering here.

Legal Structure

3.(SBU) Nigeria,s legal tool for dealing with money laundering lies solely within a 1995 decree signed into force by former military dictator Sani Abacha. No law preceded it and there has been no new legislation to date (though some revisions are planned, as reported below). This law sought to bring Nigeria into conformity with the 1988 UN Convention on Narcotics and Psychotropic Substances (aka the Vienna Drug Convention) by outlawing drug money laundering. In that regard, the law seems to address adequately the laundering of all proceeds from drug trafficking. Both the NDLEA and the Central Bank of Nigeria (CBN) are identified as the competent authorities charged with monitoring individuals, bank deposits in excess of 500,000 naira (equivalent to USD 4,460) or corporate entities, deposits in excess of two million naira (equivalent to USD 17,800). The NDLEA, however, is given the lead in investigating money laundering offenses as it is granted sweeping powers to: place any bank account under surveillance; tap any telephone line; access any computer system; and obtain any private communications of financial or commercial records. The CBN is not given these investigative powers.

4(SBU) The law contains adequate provisions for the prosecution of individuals directly involved or abetting the laundering of drug proceeds, including bank officials and even entire corporate entities. Tough penalties of imprisonment up to 25 years are prescribed for convicted offenders. The responsibility of proving the criminality of proceeds, however, is not clearly defined -- whether the prosecution,s to prove through investigation or the defendant,s to show that the proceeds were of a legitimate nature.

GON Authorities

5.(SBU) As noted above, the NDLEA is clearly identified as the lead agency charged with investigating and prosecuting money laundering. The CBN is identified as a cooperating agency in monitoring banks, though criminal investigative powers are reserved for the NDLEA. As of this writing, the NDLEA has a Money Laundering Directorate (upgraded earlier this year from a former sub-entity under the NDLEA,s Investigations Directorate) consisting of the Assistant Director heading this office and a staff of 15, of which 10 are investigators. This Directorate has no working fax or international communications capability; communications to Directorate staff requires passing a message through the NDLEA Headquarters numbers or using the Assistant Director,s personal cellular phone. The Directorate has no vehicles and has not yet prosecuted any money laundering case. Though the NDLEA has the legal authority to demand regular bank reporting of deposits above the 500,000 naira threshold and to demand bank records in the pursuit of a specific investigation, it lacks the resources to store and analyze this information.

6.(SBU) The CBN, also identified by the 1995 law as a competent authority, houses a small Money Laundering Surveillance Unit (MLSU) in Lagos. This unit is charged with receiving reports from Nigeria,s 50-plus banks on deposits over the 500,000 naira threshold and licensing the banks, operations, including the selection of their senior officials. The CBN seems to have much better relationships with the banks it regulates, and it can conduct administrative investigations but it does not have arrest or prosecution powers. The CBN,s Deputy Governor, in a recent discussion with Emboffs (ref a), also cited the existence in Abuja of a CBN "International Financial Transactions Surveillance Office (IFTSO)" that seeks to coordinate inter-agency monitoring of potential international money laundering through Nigeria, though the output of this office is unclear. Indeed, given the CBN,s lack of law enforcement jurisdiction, it is unlikely that such a body could produce criminal investigations and prosecutions.

7.(SBU) Through its close interaction with Nigeria,s banks, the CBN seems to understand the fundamentals of money laundering better than the NDLEA, but it lacks the law enforcement power endowed the NDLEA to demand bank records. In a simple but poignant analysis of this dueling authority, one official noted that "the NDLEA has the brawn and the CBN the brain, but the two don,t work well together."

Definitional Differences Mask Deficiencies

8.(SBU) In talks with Nigerian law enforcement officials, actions often described as pertaining to "money laundering" are in fact the seizure of cash assets directly related to crimes. Under various Nigerian laws -- e.g. the 1995 "419" advance-fee fraud law -- physical and cash assets seized by law enforcement personnel through the course of enforcement action are subject to forfeiture upon conviction. When pressed for elaboration, however, these officials admit that few or no additional or separate criminal cases are opened into the movement of criminal proceeds; i.e. the investigation of bank records or the investigation of individuals abetting the placement of criminal funds. When defendants are prosecuted for organized crime activities -- drug trafficking, 419 fraud, car theft -- money laundering is seldom if ever added as a charge for prosecution. In a recent meeting with Post's RNLEO, the Director General of the West African Institute for Financial and Economic Management (WAIFEM), a former senior CBN official, stated that there has not been one money laundering case prosecuted in Nigeria. While this statement remains unverified, it highlights the anemic law enforcement response to Nigeria,s considerable money laundering problem.

The FATF,s Naming of Nigeria as a "NCCT"

9.(SBU) In declaring Nigeria a "Non-Cooperating Country or Territory (NCCT)," the Africa-Middle East Review Group (AMERG) of the Financial Action Task Force (FATF) pointed to the lack of the a response from the GON to 12 questions posed in a formal letter from the AMERG as part of the AMERG,s review. The FATF report also cites several apparent serious deficiencies in Nigeria,s money laundering control regime. Unfortunately, the GON seems to have focussed on its failure to respond to the AMERG,s questionnaire in a timely fashion as the cause of its NCCT status, while not paying due attention to the substantive concerns of the AMERG.

10.(SBU) In the FATF,s formal NCCT report, Nigeria was faulted for deficiencies in the areas of the FATF,s NCCT criteria: 5, 10, 17, 19, and 24. (the report and the entire list of NCCT criteria can be found on the FATF,s website -- www.oecd.org/fatf) These criteria, in order, are: a) inadequate rules for the licensing and creation of financial institutions, including assessing the backgrounds of managers and beneficial owners; b) excessive secrecy provisions; c) lack of identification of the beneficial owner(s) of legal and business entities; d) administrative obstacles to international cooperation; and e) lack of an exchange of mutual legal assistance.

11.(SBU) Clearly some of these cited deficiencies are the result of the GON,s failure to respond to the FATF,s questionnaire. The perceived failure of the GON to install an adequate structure to screen bank managers, beneficial owners and account holders may not take into account some provisions under Nigerian law and within CBN regulations.

12.(SBU) On the other hand, the FATF review strangely omits any failure of Nigeria to comply with FATF recommendation number 4 -- "extending the offense of drug money laundering to one based on serious offenses." Neither does the review note that fails to meet NCCT criterion number 29 -- "absence of a financial intelligence unit or of an equivalent mechanism."

No Full Coverage of Predicate Offenses

13.(SBU) Nigeria lacks a money laundering law that covers the full range of money laundering derived from "serious offenses" (FATF Recommendation number 4). Most observers agree that the 1995 law should be amended or superceded by legislation that allows for additional predicate offenses. There is a move afoot, led by the NDLEA, to expand the 1995 law to cover a number of specific offenses including those mentioned in para 2. Clearly this is essential for an effective anti-money laundering effort in Nigeria and we should support it. In promoting this legislative reform, however, the NDLEA wishes to maintain its supremacy in coordinating all of Nigeria,s anti-money laundering efforts.

This would essentially put the NDLEA into a much broader legal mandate on criminal investigations -- cutting across jurisdictions of the Police, Central Bank, and the Anti-Corruption Commission. We do not see this as practical or advisable. The NDLEA is struggling to fulfill its current mandate as a drug enforcement agency; it does not have the resources to carry out effectively such a broad mandate and scope of responsibility. We are encouraging the Office of the Presidency to create a new centralized unit to fulfill this function, such as the proposed Financial Crimes Commission (see below).

No Financial Intelligence Unit or Central Body

14.(SBU) Closely related to this deficiency is the need to replace the NDLEA with a centralized government unit that can coordinate government-wide anti-money laundering activities, serve as a clearinghouse for intelligence, and serve as a central interface for international queries on money laundering investigations. Highlighting all of these deficiencies is our recent request, based on President Bush,s new Executive Order of September 23 seeking to freeze the assets of suspected terrorists, to screen accounts connected with 27 individuals identified by the USG as terrorists. The Government of Nigeria is not able to provide a full response, as there is no one centralized database on money laundering.

GON Commitment: A new Financial Crimes Commission

15.(SBU) In part responding to international concern over Nigeria,s money laundering problem, President Obasanjo is currently planning the creation of a Financial Crimes Commission (FCC) that would centralize all law enforcement and policy coordination against myriad financial crimes in Nigeria. This proposal originated in the office of the President,s Special Advisor for Drugs and Financial Crimes and sought to create an agency akin to the NDLEA that would conduct a more aggressive and better coordinated law enforcement effort against financial fraud and money laundering. The proposed FCC apparently would reside in the

Office of the President and would have full investigative and prosecutorial powers. It would be staffed by officers on detail from the Police, NDLEA, CBN, and other security agencies. We see this as the best option for Nigeria,s addressing the FATF,s concerns -- offering an agency that could centralize the GON,s anti-money laundering campaign while housing a "FIU" to serve as a clearinghouse for money laundering intelligence in part to improve cooperation with the international community. In an October 8 meeting with the Ambassador, President Obasanjo,s National Security Advisor stated that the FCC proposal would soon be sent to the National Assembly for approval; he expressed confidence that the FCC would be created by the end of the year.

Jeter